

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of) File No. EB-02-IH-0261
) NAL Acct. No. 2004 3208 0011
CLEAR CHANNEL BROADCASTING) FRN # 0001587971
LICENSES, INC.)
)
Licensee of Stations)
WPLA(FM), Callahan, Florida) Facility ID # 51975
WCKT(FM), Port Charlotte, Florida)
(Formerly Station WRLR(FM))) Facility ID # 35213
)
CITICASTERS LICENSES, L.P.) FRN # 0003017423
)
Licensee of Station)
WXTB(FM), Clearwater, Florida) Facility ID # 11274
)
CAPSTAR TX LIMITED PARTNERSHIP) FRN # 0003474947
)
Licensee of Station)
WRLX(FM), West Palm Beach, Florida) Facility ID # 20442

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 26, 2004

Released: January 27, 2004

By the Commission: Chairman Powell, Commissioners Martin and Adelstein issuing separate statements; Commissioner Copps dissenting and issuing a separate statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability For Forfeiture ("NAL"), issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's rules, we find that the captioned licensees, all of which are subsidiaries of Clear Channel Communications, Inc. ("Clear Channel"), apparently violated 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999, by willfully and repeatedly airing indecent material over the captioned stations during the July 19, November 14, 19, 26 and 27 and December 27, 2001, broadcasts of the "Bubba the Love Sponge" program. Furthermore, we find that they each appear to have failed to maintain copies of certain required documents in the public inspection files of each of their respective captioned stations, in apparent willful violation of Section 73.3526(e)(10) of the Commission's rules. Based on the totality of the evidence before us and Clear Channel's history of transgressions relating to the broadcast of indecent material over stations licensed to its

1 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

2 47 C.F.R. § 73.3526(e)(10).

subsidiaries, we conclude that Clear Channel is apparently liable for a monetary forfeiture in the amount of Seven Hundred Fifty-Five Thousand Dollars (\$755,000), the statutory maximum of \$27,500 each for 26 indecency violations (\$715,000), and the base amount of \$10,000 each for four public file violations (\$40,000).

II. BACKGROUND

2. This proceeding arises out of a series of formal complaints filed on behalf of Douglas Vanderlaan against Clear Channel alleging: (1) indecency violations; (2) public inspection file violations; (3) improper intimidation by Clear Channel against the complainant; and (4) the promotion and glorification of the use of illegal drugs in Clear Channel's broadcasts and on its web site.³ The Enforcement Bureau (the "Bureau") issued a series of letters of inquiry⁴ and the record includes responses by Clear Channel⁵ and by the complainant, to Clear Channel's responses.⁶

III. DISCUSSION

A. Indecency Analysis

3. The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. The Commission's role in overseeing program content is very limited. The First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from censoring program material and from

³ Complaint of Douglas Vanderlaan, dated April 3, 2002 ("*First Complaint*"); Second Complaint of Douglas Vanderlaan, dated October 10, 2002 ("*Second Complaint*"); Third Complaint and Supplement of Douglas Vanderlaan, dated January 27, 2003 ("*Third Complaint*").

⁴ Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Clear Channel Broadcasting Licenses, Inc. and Citicasters Licenses, L.P., dated July 5, 2002 ("*Initial LOI*"); Letters from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Clear Channel Broadcasting Licenses, Inc., Citicasters Licenses, L.P., Capstar TX Limited Partnership and Kenneth E. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., dated August 18, 2003 ("*Second LOI*" and "*Third LOI*").

⁵ Letter from John M. Burgett, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 15, 2002; Letter from Kenneth W. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 1, 2002 ("*Initial LOI Response*"); Letter from Kenneth W. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 28, 2002 ("*Supplement to Initial LOI Response*"); Letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 16, 2003 ("*Second LOI Response*"); Letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 16, 2003 ("*Third LOI Response*"); Letter from John M. Burgett, Esq., to Judy Lancaster, Esq., Investigations and Hearings Division, Enforcement Bureau

⁶ Letter from Arthur V. Belendiuk, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 13, 2002 ("*First Vanderlaan Reply*"); Letter from Douglas G. Vanderlaan to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 24, 2003. ("*Second Vanderlaan Reply*")

interfering with broadcasters' freedom of expression.⁷ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency and obscenity. Specifically, it is a violation of federal law to broadcast obscene or indecent programming. Title 18 of the United States Code, Section 1464, prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."⁸ In addition, consistent with a subsequent statute and court case,⁹ Section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast indecent material during the period 6 a.m. through 10 p.m.

4. As an initial matter, we find that all of the seven segments at issue in this NAL were broadcast during this prohibited time period, at the time of day and on the specific dates alleged by Mr. Vanderlaan in his *First Complaint*,¹⁰ albeit not by all four of the captioned stations. In this regard, Clear Channel has acknowledged that segments 1, 2 and 7 were indeed broadcast, and that the transcripts for these segments submitted by Mr. Vanderlaan are accurate.¹¹ Clear Channel states that it did not retain audio recordings or transcripts of its own for the broadcasts encompassed by the remaining three segments, segments 3, 4, 5 and 6. Consequently, as to those segments, Clear Channel refuses to "admit or acknowledge that the material in the transcripts provided by Mr. Vanderlaan aired as he alleges."¹² However, based upon the evidence before us, including Clear Channel's failure to refute adequately Mr. Vanderlaan's allegations, we find that Segments 3, 4, 5 and 6 were also broadcast at the time and on the dates indicated in the *First Complaint*, and that the transcripts for those segments accurately depict those broadcasts.¹³ Clear Channel concedes that Stations WXTB(FM), WRLX(FM) and WPLA(FM) regularly aired the "Bubba the Love Sponge" program during the entire period of time encompassed by all seven segments and does not claim that any of the stations edited the show. Consequently, we find that Stations WXTB(FM), WRLX(FM) and WPLA(FM) broadcast all seven of the segments, as alleged. Clear Channel, however, represents that Station WCKT(FM) did not begin carrying the "Bubba the Love Sponge" program until October 29, 2001.¹⁴ Because segments 1 and 2 were broadcast before WCKT(FM) commenced airing the program, we find that the station broadcast only segments 3 through 7.

5. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.¹⁵ The

⁷ See 47 U.S.C. § 326.

⁸ 18 U.S.C. § 1464.

⁹ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir 1995), cert. denied, 516 U.S. 1043 (1996) ("Act III").

¹⁰ See Attachment A.

¹¹ *Supplement to Initial LOI Response* at 2.

¹² *Initial LOI Response* at 1.

¹³ *Infinity Broadcasting Corp. of Los Angeles (KROQ-FM)*, Memorandum Opinion and Order, 17 FCC Rcd 9892, 9896, ¶¶ 17-18 (2002).

¹⁴ See *Third LOI Response* at 1.

¹⁵ U.S. CONST., amend. I; *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("ACT I").

federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent material, as well the Commission's interpretation and implementation of the governing statute.¹⁶ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.¹⁷

6. The Commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.¹⁸

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition -- that is, the material must describe or depict sexual or excretory organs or activities. Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.¹⁹

7. As an initial matter, all of the seven program segments, in one manner or another, unquestionably involved on-air discussions relating to descriptions or depictions of sexual organs, excretory organs and/or activities of a sexual nature. The broadcasts involved conversations about such things as oral sex, penises, testicles, masturbation, intercourse, orgasms and breasts. Clear Channel does not dispute that the broadcasts involved such descriptions or depictions.²⁰ Accordingly, we conclude that each of the segments that were broadcast satisfies the first prong of our indecency analysis.

8. Having satisfied the first prong, we now turn to an analysis of whether the material in the seven segments subject to this NAL satisfies the second prong of the Commission's two-part indecency analysis -- that is, whether the broadcasts were patently offensive as measured by

¹⁶ Title 18 of the United States Code, Section 1464 (18 U.S.C. § 1464), prohibits the utterance of "any obscene, indecent or profane language by means of radio communication." *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *ACT I*, 852 F.2d at 1339; *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert. denied*, 503 U.S. 914 (1992) ("*ACT IP*"); *ACT III*, 58 F.3d 654.

¹⁷ *ACT I*, 852 F.2d at 1344 ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear."); *ACT I*, 852 F.2d at 1340, n.14 ("the potential chilling effect of the FCC's general definition of indecency will be tempered by the Commission's restrained enforcement policy.") See also *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

¹⁸ *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

¹⁹ *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency ("Indecency Policy Statement")*, 16 FCC Rcd 7999, 8002, ¶¶ 7-8 (2001) (emphasis in original).

²⁰ See *Initial LOI Response* at 2-6. As a preface to its analysis of each segment, Clear Channel states "Although the transcripts do include references and phrases of a sexual nature, and while some may find such material to be distasteful or offensive, these references and phrases alone do not make the broadcasts indecent." *Id.* at 2.

contemporary community standards for the broadcast medium.²¹ In our assessment of whether broadcast material is patently offensive, “the *full context* in which the material appeared is critically important.”²² Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the description; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock.²³ In examining these three factors, we must weigh and balance them to determine whether the broadcast material is patently offensive because “[e]ach indecency case presents its own particular mix of these, and possibly, other factors.”²⁴ In particular cases, the weight of one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,²⁵ or, alternatively, removing the broadcast material from the realm of indecency.²⁶

9. We turn now to an analysis of these factors as they relate to each segment,²⁷ to determine whether the material that was broadcast, taken in context, is patently offensive as measured by contemporary community standards for the broadcast medium.

Segment 1 (aired July 19, 2001 between 6:30 and 8:30 a.m.):²⁸ In this segment,²⁹ skits in which the voices of purported cartoon characters talk about drugs and sex are inserted between advertisements for Cartoon Network’s Friday night cartoons that are identified as “provocative adult cartoons to help you get your freak on.” The first skit begins when Shaggy tells Scooby Doo that he needs crack cocaine but has no money to buy it. Scooby Doo responds that Shaggy could “su(bleep)ck d(bleep)ick” to pay for the drugs. In the next skit, Fat Albert, a/k/a Phat Diddy Daddy, gets killed in a drive-by shooting after bragging that Jennifer Lopez had been “s(bleep)ing Diddy Daddy’s (bleep)ck the previous night. The third skit begins with the theme music from “The Jetsons” cartoon show. George Jetson then begins telling Jane that he no longer needs Viagra because he got a “Spacely

²¹ The “contemporary standards for the broadcast medium” criterion is that of an average broadcast listener and with respect to Commission decisions, does not encompass any particular geographic area. See *WPBN/WTOM License Subsidiary, Inc.*, 15 FCC Rcd 1838, 1841 (2000).

²² *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 9 (emphasis in original).

²³ *Id.* at 8002-15, ¶¶ 8-23.

²⁴ *Id.* at 8003, ¶ 10.

²⁵ *Id.* at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, 12 FCC Rcd 21828 (MMB 1997) (forfeiture paid)) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same)).

²⁶ *Id.* at 8010, ¶ 20 (“the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding”).

²⁷ See Attachment A *passim*.

²⁸ The complainant's transcript reflects bleeps of certain offensive words. A review of the relevant tapes indicates that the letters before the word “(bleep)” in many cases were aired. However, although the transcript suggests otherwise, a review of the relevant tape indicates that the letters after the word “(bleep)” were completely bleeped. In any event, our indecency finding is not based on airing of the specific bleeped words.

²⁹ See Attachment A at 1-2.

Sprocket (bleep)ck ring.” After George flips a switch to activate the device, sound effects indicate that the device malfunctions, and the skit ends with George calling for Jane to turn off the device. Next, Alvin the Chipmunk complains that he hasn’t “been laid in almost six weeks.” Another chipmunk responds that his problem is due to the “f(bleep)cking pussy music we play” and begins to sing a more “kick ass” song directing a “filthy chipmunk-whore” to “[s]uck on my (inaudible) Chipmunk (bleep)s,” “[p]ut ‘em in your mouth and (bleep)uck ‘em.” He continues by singing “They taste like pistachios. They’re warm and fuzzy. Suck my (bleep).” The song is interrupted by a final advertisement for “Cartoons with Balls.”

This segment contains sufficiently graphic and explicit references to sexual and excretory organs and activities to satisfy the first criterion of our contextual analysis. Such sexual references are found in each of the skits and are repeated throughout the segment, satisfying the second factor of our contextual analysis. Finally, the use of cartoon characters in such a sexually explicit manner during hours of the day when children are likely to be listening is shocking and makes this segment patently offensive. It is foreseeable that young children would be particularly attentive listeners to this segment because of the character voices and the cartoon theme music used in the segment. The calculated and callous nature of the stations’ decision to impose this predictably offensive material upon young, vulnerable listeners is particularly compelling and weighs heavily in our analysis. Thus, the segment also satisfies the third factor of our contextual analysis. Consequently, this segment is apparently indecent.

Segment 2 (July 19, 2001, between 6:30 and 8:14 a.m.): In this segment,³⁰ a male applicant for a job as an underwear model calls the model search hotline and describes his as the “perfect penis,” so gorgeous that “[e]very f(bleep)ing, every -- every ounce of f(bleep)cking co(bleep) purple (inaudible) of it” “should be hanging in the f(bleep)cking Louvre,” and so strong that it can lift a 25-pound weight and can split his pants like the Incredible Hulk. Such vivid descriptions of the caller’s penis satisfy the first criterion of our contextual analysis. The entire segment discusses the man’s penis, and graphic descriptions of it are referenced throughout the segment. Thus, the second criterion of the contextual analysis is also satisfied. The sole purpose of these vivid descriptions apparently is to shock and titillate listeners. Thus, the third criterion of our contextual analysis is satisfied. Because this segment repeats graphic and explicit descriptions of a sexual organ in an effort to titillate listeners, it appears to be patently offensive and indecent.

Segment 3 (November 14, 2001, between 7:00 and 8:55 a.m.): In this segment,³¹ one of the men participating in the on-air discussion is Ned, a self-described “loud masturbator.” He views the act of masturbating in public as a performance and states that he looks as though he’s having a “grand mal seizure” when he does it. When asked to do so by the host, Ned, with increasing drum beat rhythms as an accompaniment, reenacts masturbating and reaching orgasm. Despite the use of euphemisms such as “wax[ing] your carrot” when referring to masturbation, and “sparky” when referring to a penis, the sexual references in the segment are unmistakable and sufficiently explicit to satisfy the first criteria of our contextual analysis. The entire segment dwells at length on

³⁰ See Attachment A at 3-5.

³¹ See Attachment A at 5-7.

masturbation. Thus, the second criterion of our contextual analysis is also satisfied. Finally, the participants' discussions of masturbating styles and techniques, and Ned's simulation of such a sex act, make it apparent that the segment was used to titillate and shock the program's listeners. In doing so, this segment satisfies the third criterion of our contextual analysis. Accordingly, we find that this segment appears to be patently offensive and indecent.

Segment 4 (November 19, 2001, between 8:00 and 9:00 a.m.): In this segment,³² three males interview a female caller about her sexual exploits with "Spider," another man. They discuss the length of Spider's penis, the length of time their sexual encounter lasted, and the sexual techniques they used. After the caller indicated that she had given Spider oral sex, one host responded that he hoped Spider had not given her oral sex because heavier women, like her, have "some cheese down there." The hosts then began ridiculing the caller about her size and asked "Are you like a Ball Park Plank -- Frank, you p[l]ump when we bang ya?" The conversation between the hosts and the caller was sufficiently explicit and graphic to convey unmistakably the sexual meaning of the euphemisms they used and to satisfy the first criterion of our contextual analysis. The participants talked at length about sexual and excretory activities and organs. It was apparent that the purpose of the call was to discuss the sexual organs and activities of the caller and Spider. As a consequence, the discussion dwelled upon the subjects of sexual organs and activities, and, thus, satisfies the second criterion of our contextual analysis. Finally, it is apparent that the discussion was titillating and shocking with respect to the audience. Thus, this segment meets the third and final criterion of our contextual analysis. As a consequence, we find that the segment appears to be patently offensive and indecent.

Segment 5 (November 26, 2001, between 7:00 and 9:00 a.m.): In this segment,³³ a male host and two male cohorts interview or talk with two female studio guests who are participants in a contest to win breast implant surgery. The host takes pictures of the women and directs and describes their poses, e.g., directing one to let him "get a little more ass," in the picture and, later, to pose so that he can take a "front panty shot." A discussion of oral sex begins when the host tells Hillary, one of the women, that long fingernails like hers "feel so good on my boys," and that his genital area is shaved. In response, Hillary states, "That's good. No -- no hairs in the teeth and stuff." She then discusses her preference for giving, rather than getting, oral sex and declares herself to be a "big oral queen" who could "go a half-hour solid," before her "cheeks would hurt." She discusses her sexual escapades with two men, her inability to reach orgasm and her frequent masturbation. During the ensuing discussion the host encourages Hillary to masturbate on air while he watches and gives a "play by play." To encourage her to cooperate, he tells her that masturbating on air would increase her chances of winning breast implants and, when she continues to refuse, he proposes that he or the other female guest give her manual sex during the broadcast.

The graphic and explicit descriptions of sexual or excretory organs and activities contained in this segment satisfy the first criterion of our contextual analysis. The repetition of these descriptions and other sexual references throughout the segment satisfy the second criterion of our contextual analysis. The continued and repeated explicit and graphic sexual

³² See Attachment A at 7-9.

³³ See Attachment A at 9-21.

references clearly demonstrate the shocking and titillating nature of the material, thus satisfying the third criterion of our contextual analysis. Consequently, we find that this segment appears to be patently offensive and indecent.

Segment 6 (November 27, 2001, between 7:30 and 9:00 a.m.): In this segment,³⁴ a male host and a co-host interview two female studio guests who are participants in the “Twelve Boobs of Christmas” contest to win breast implant surgery. The segment begins with the host taking pictures of the contestants’ “boobs” in order to “facilitate you on some new boobies, baby.” He then begins asking about their sexual activities and is impressed that one of the women, when giving “oral sex,” does not “recycle,” or “waste a drop.” This segment is sufficiently explicit and graphic to meet criteria one of our contextual analysis. Because the sexual descriptions and references are repeated throughout the segment, criterion two of our contextual analysis is also satisfied. Finally, these sexual references and discussions appear to be inserted only to titillate the audience. Thus, criterion three of our contextual analysis is also met. Consequently, we find that this segment appears to be patently offensive and indecent.

Segment 7 (December 27, 2001, between 8:00 and 9:00 a.m.): In this segment,³⁵ Bubba and two male co-hosts discuss the abnormally large size of his “balls,” while a singer and chorus sing about his testicles in explicit and graphic detail. The euphemism, “balls,” is a common one, generally known to mean testicles, a sexual organ. Descriptions, such as those stating that Bubba’s “balls,” which are the size of “cantaloupes” or “coconuts,” are “firm and meaty” with “ingrown hairs,” are sufficiently graphic to meet the first contextual criteria. Such descriptions are repeated at length during the entire segment, satisfying the second contextual criterion. Finally, the material satisfies the third criterion of our contextual analysis because it is pandering, titillating and shocking to the program’s listeners. Thus, we find that this segment appears to be patently offensive and indecent.

10. Based on the foregoing, we find that the material that was broadcast in these seven segments satisfies the second prong of our two-part test and, thus, appear patently offensive, as measured by contemporary community standards for the broadcast medium. Because we have found these seven segments to have apparently satisfied both prongs of our two part test, we conclude that the material contained apparently indecent speech.

11. Each of the segments was broadcast between 6 a.m. to 10 p.m., at a time of day when the broadcast of indecent material is explicitly prohibited by Section 73.3999 of the Commission’s rules. Because these segments appear to have contained indecent speech and were broadcast at times of the day when indecent speech is proscribed, each of the broadcasts appears to be legally actionable.³⁶ We find, therefore, that three of the captioned stations (Stations WXTB(FM), WRLX(FM) and WPLA(FM)) each broadcast seven apparently indecent segments,³⁷ in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the

³⁴ See Attachment A at 21-25.

³⁵ See Attachment A at 26-28.

³⁶ See *ACT III*, 58 F.3d at 660-63.

³⁷ See *supra* ¶ 4.

Commission's rules. In addition, the fourth captioned station (Station WCKT(FM)), which began carrying the "Bubba the Love Sponge" program subsequent to the other stations, broadcast five of the apparently indecent segments (Segments 3, 4, 5, 6 and 7),³⁸ also in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.³⁹

B. Public Inspection File

12. Section 73.3526(e)(10) of the Commission's rules requires broadcast licensees to maintain a public inspection file containing specific types of information. Section 73.3526(e)(10) specifies that, among the documents that must be included in the file, is "material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC . . ."⁴⁰ Such material must be retained in a station's public inspection file pending written notification that it may be discarded.⁴¹ Where lapses occur in maintaining the public inspection file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁴²

13. It is beyond dispute that, on August 22, 2001, each of the four captioned stations failed to include copies of documents relating to Mr. Vanderlaan's *First Complaint* in its public inspection file. In declarations accompanying the *Second Complaint*, Mr. Vanderlaan, Dr. David D. Swanson, Kathy Taunton and Sally Oesch each states that, on that date, he or she visited one of the captioned stations during normal business hours, reviewed its public inspection file, and determined that the file did not contain a copy of the *First Complaint* or any documents related to it.⁴³ Although Clear Channel does not dispute these allegations, it argues that Station WXTB(FM) should be relieved of liability for its failure to have maintained the *First Complaint* in its public inspection file because a copy of the document was located elsewhere in the station after the requester had specifically identified and requested it.⁴⁴ This argument lacks merit. The Commission requires that such documents be maintained in the public inspection file.⁴⁵ The obvious intent of the rule is to facilitate public access to such documents. To require an individual

³⁸ *Id.*

³⁹ The *First Complaint* also included allegations of indecency with respect to three other broadcast segments. We conclude that these broadcasts were not sufficiently graphic and/or sustained to be considered indecent and are denying the *First Complaint* with respect to these segments.

⁴⁰ 47 C.F.R. § 73.3526(e)(10).

⁴¹ *Id.*

⁴² See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992) ("*Surrey*").

⁴³ *Second Complaint* at Exhibits 1, 4. In the Declaration of Ms. Taunton, who attempted to inspect the WXTB(FM) public file, she states that, after specifically asking to see the *First Complaint*, "[a] copy of the Complaint was subsequently found in the station manager's office and made available for my review." *Id.* at Exhibit 3. However, it is clear that, had Ms. Taunton not been aware of that document, she would not have learned of it from her inspection of the file, the purpose behind the requirement that it be included in the file.

⁴⁴ *Third LOI Response* at 2.

⁴⁵ 47 C.F.R. § 73.3526(e)(10).

member of the public to examine a station's public inspection file and then identify for station personnel what is missing from it clearly is inconsistent with the intent of the rule section.

14. Based on the information before us, we find that the captioned licensees at each of their respective captioned stations failed to maintain certain required documents in their respective public inspection files, in apparent willful violation of Section 73.3526(e)(10) of the Commission's rules.

C. Other Allegations

15. In his *First Complaint*, Mr. Vanderlaan alleges that Clear Channel engaged in intimidating and abusive conduct after he had filed his *First Complaint* with the Commission, by threatening him with legal action and complaining to his employer.⁴⁶ A finding of "[i]ntimidation or harassment of witnesses requires threats of reprisals or some other unnecessary and abusive conduct reasonably calculated to dissuade a witness from continuing his or her involvement in a proceeding."⁴⁷ In this case, Mr. Vanderlaan presents no evidence to corroborate his claim that Clear Channel contacted his employer and provides only a copy of his attorney's response to a letter purportedly from the attorney for Todd "Bubba" Clem (the host of the program) to corroborate his allegation that he was threatened with legal action by Clear Channel. In fact, Mr. Vanderlaan presents no evidence that the captioned licensees or Clear Channel made, or were even aware of, the contacts about which he complains. Consequently, there is insufficient evidence to support a finding that Clear Channel or the captioned licensees engaged in intimidation or abuse. Accordingly, we find no merit to this allegation.

16. In both his *First Complaint* and *Third Complaint and Supplement*, Mr. Vanderlaan alleges that Clear Channel promotes the use of illegal drugs.⁴⁸ Consistent with the Commission's limited role overseeing programming content mandated by the First Amendment and Section 326 of the Act,⁴⁹ there is no rule or statutory provision barring a licensee from airing material referencing drug use.⁵⁰ Thus, the allegations concerning this material do not warrant enforcement action.

IV. PROPOSED FORFEITURE

17. Having determined that the captioned licensees apparently willfully and/or repeatedly violated 18 U.S.C. § 1464 and Sections 73.3999 and 73.3526(e)(10) of the Commission's rules, we turn to an analysis of whether, and to what extent, we should propose

⁴⁶ See *First Complaint* at 15-16.

⁴⁷ See *Isothermal Community College*, DA 03-3638, 2003 WL 22682096 (Enf. Bur. November 14, 2003) (citing *Kaye-Smith Enterprises*, 98 FCC 2d 675, 682 (1984)); *Hoffart v. FCC*, 787 F.2d 675 (D.C. Cir. 1986) (citing *Chronicle Broadcasting Co.*, 19 FCC 2d 240, 244 (1969)).

⁴⁸ See also *Second Vanderlaan Reply*.

⁴⁹ 47 U.S.C. § 326.

⁵⁰ See, e.g., *Licensee Responsibility to Review Records Before Their Broadcast*, Notice, 28 FCC 2d 409 (1971), *modified*, Memorandum Opinion and Order, 31 FCC 2d 377 (1971), *aff'd sub nom*, *Yale Broadcasting Co. v. FCC*, 478 F.2d 594 (D.C. Cir. 1973), *cert. denied*, 414 U.S. 914 (1973).

sanctions in this instance. Under Section 503(b)(1) of the Act,⁵¹ any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵² In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁵³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule, regulation or order.⁵⁴

18. In the instant case, we have determined that three of the captioned stations (Stations WXTB(FM), WRLX(FM) and WPLA(FM)) each broadcast seven apparently indecent segments of the “Bubba the Love Sponge” program, in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission’s rules, and that the remaining captioned station (Station WCKT(FM)), which began carrying the “Bubba the Love Sponge” program after the other stations, broadcast five apparently indecent segments, in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission’s rules. Stated otherwise, we conclude that the captioned licensees apparently violated 18 U.S.C. § 1464 and Section 73.3999 of the Commission’s rules on a total of 26 separate occasions. Consequently, based upon our review of the record in this case, we conclude that Clear Channel, as the parent of each licensee, is apparently liable for forfeitures based upon 26 willful and repeated violations of our indecency rules.⁵⁵

19. The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for the transmission of indecent material.⁵⁶ The *Forfeiture Policy Statement* also specifies

⁵¹ 47 U.S.C. § 503(b)(1).

⁵² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage). “Repeated” merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

⁵³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁵⁴ *See, e.g., SBC Communications, Inc.*, Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

⁵⁵ 7 broadcasts x 3 stations (WXTB(FM), WRLX(FM) and WPLA(FM)) = 21 violations + 5 broadcasts by WCKT(FM) = 26 violations.

⁵⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80(b). The Commission has amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. The new rates apply to violations that occur or continue after November 13, 2000. *See Amendment of Section 1.80(b) of the*

that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵⁷

20. Based upon our review of the record before us, we believe that an upward adjustment to the statutory maximum of \$27,500 for each of the 26 apparent indecency violations is warranted. The large number of apparent violations here, combined with Clear Channel’s repeated broadcasts in the past of apparently indecent material over multiple stations licensed to its subsidiaries, evidences a pattern of violations that justifies a proposed forfeiture of the statutory maximum.⁵⁸

21. Because we find that Clear Channel, through its subsidiary captioned licensee companies, apparently violated 18 U.S.C. § 1464 and Section 73.3999 of the Commission’s rules on 26 separate occasions, and that each such violation is subject to an apparent forfeiture in the amount of \$27,500, we conclude that Clear Channel is apparently liable for a forfeiture in the amount of \$715,000 for willfully and repeatedly broadcasting indecent material during various segments of the “Bubba the Love Sponge” program over the captioned stations. Particularly in light of Clear Channel’s history of violations of the indecency rules, we also take this opportunity to reiterate our recent admonition (which took place after the behavior at issue here) that serious multiple violations of our indecency rule by broadcasters may well lead to the commencement of license revocation proceedings.⁵⁹ We expect Clear Channel in particular to take this admonition seriously.

22. We also have previously determined that the four captioned stations failed to maintain certain required documents in their respective public inspection files, in apparent willful violation of Section 73.3526(e)(10) of the Commission’s rules. Based upon the factors articulated in Section 503(b)(2)(D) of the Act and the base forfeiture amount specified in the *Forfeiture Policy Statement* for violations of the our public inspection file rules, we conclude that a proposed forfeiture is warranted in the base forfeiture amount of \$10,000 for each of the four apparent willful violations of Section 73.3526(e)(10) of the Commission’s rules, for a total of \$40,000.

Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation, 15 FCC Rcd 18221 (2000).

⁵⁷ The maximum forfeiture amount for a single violation for the broadcast of apparently indecent material is \$27,500. 47 C.F.R. § 1.80(b)(1).

⁵⁸ See, e.g., *AMFM Radio Licenses, LLC (WWDC(FM))*, Notice of Apparent Liability for Forfeiture, FCC 03-233 (rel. Oct. 2, 2003) (forfeiture paid); *Citicasters Co. (KEGL(FM))*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 7546 (Enf. Bur. 2001) (forfeiture paid); *Citicasters Co. (WXTB(FM))*, Forfeiture Order, 15 FCC Rcd 25453 (2000) (forfeiture paid); *Citicasters Co. (KSJO(FM))*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 19095 (Enf. Bur. 2000) (forfeiture paid); *Citicasters Co. (KSJO(FM))*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 19091 (Enf. Bur. 2000) (forfeiture paid); *Citicasters Co. (WXTB(FM))*, Forfeiture Order, 15 FCC Rcd 11906 (2000) (forfeiture paid).

⁵⁹ See *Infinity Broadcasting Operations, Inc. (WKRK-FM)*, Forfeiture Order, 18 FCC Rcd 6915, 6919, ¶ 13 (2003); see also *AMFM Radio Licenses LLC (WWDC-FM)*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19917, ¶16 (2003) (forfeiture paid); *Infinity Broadcasting Operations, Inc. (WNEW(FM))*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19954, ¶ 19 (2003) (response pending).

V. ORDERING CLAUSES

23. ACCORDINGLY, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules,⁶⁰ that Clear Channel Communications, Inc., the parent company of each of the above-captioned licensees, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the total amount of Seven Hundred Fifty-Five Thousand Dollars (\$755,000), for willfully violating 18 U.S.C. § 1464 and Sections 73.3999 and 73.3526(e)(10) of the Commission's rules.⁶¹

24. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release of this Notice, Clear Channel Communications, Inc. SHALL PAY the full amount of the proposed forfeiture against it or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

25. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Numbers ("FRN") referenced above and also should note the NAL/Account Number referenced above.

26. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington D.C. 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

28. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁶²

29. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If Clear Channel qualifies as a small entity and if it wishes to be treated as a small entity for tracking purposes, it should so certify to us within thirty (30) days of

⁶⁰ 47 C.F.R. § 1.80.

⁶¹ Station WXTB(FM), Station WRLX(FM) and Station WPLA(FM) shall each be allocated the sum of Two Hundred Two Thousand Five Hundred Dollars (\$202,500.00) for six indecency violations and one public inspection file violation (6 x \$27,500 = \$192,500 + \$10,000 = \$202,500). The sum of One Hundred Forty-Seven Thousand Five Hundred Dollars (\$147,500.00) is allocated to Station WCKT(FM) for five violations of the Commission's indecency rules and one violation of the Commission's public inspection file rule [5 x \$27,500 = \$137,500 + \$10,000 = \$147,500).

⁶² See 47 C.F.R. § 1.1914.

this NAL, either in its response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division. The certification should indicate whether Clear Channel, including its parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment B of this Notice of Apparent Liability. This information will be used for tracking purposes only. Clear Channel's response or failure to respond to this question will have no effect on its rights and responsibilities pursuant to Section 503(b) of the Communications Act. If Clear Channel has questions regarding any of the information contained in Attachment B, it should contact OCBO at (202) 418-0990.

30. Accordingly, IT IS ORDERED, that the *First Complaint, Second Complaint and Third Complaint and Supplement* filed by Douglas Vanderlaan ARE GRANTED to the extent indicated herein, AND ARE OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.

31. IT IS FURTHER ORDERED, that copies of this *Notice of Apparent Liability For Forfeiture* shall be sent, by Certified Mail Return Receipt Requested, to Mr. Kenneth E. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., c/o Clear Channel Worldwide, 200 East Basse Road, San Antonio, Texas 78209-8328, with a copy to Clear Channel's counsel, John M. Burgett, Esq., at Wiley, Rein & Fielding, LLP, 1776 K Street, N.W., Washington, D.C., 20006, and to Mr. Douglas Vanderlaan, 8114 Parkridge Circle South, Jacksonville, Florida 32211, with a copy to his counsel, Arthur V. Belendiuk, Esq., at Smithwick & Belendiuk P.C., 5028 Wisconsin Avenue, N.W., #301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Attachment A

*Excerpts From WPLA(FM) Program Transcript
Provided As Exhibit 2 to April 3, 2002,
Complaint of Douglas Vanderlaan*

Attachment A

**BUBBA THE LOVE SPONGE
TRANSCRIPT**

Radio Station: WPLA-FM, Callahan, Florida

Material Broadcast: The Bubba The Love Sponge Morning Show

SEGMENT 1: July 19, 2001, 6:30-8:30 AM

Male Announcer: MA
 Shaggy Voice: SV
 Scooby Doo Voice: SD
 Fat Albert Voice: FA
 Male Friend Voice: MF
 George Jetson Voice: GJ
 Chipmunk Voices: CV
 Alvin Chipmunk: AC

Inaudible. Music begins playing. Spoof commercial weaves in.

MA ..thought cartoons are just for kids. Well you need to check out Cartoon Network on Friday nights. Provocative adult cartoons to help you get your freak on.

Music - Theme from 'Scooby Doo' cartoon. "Scooby Doo, Hey Scooby, Where are you?"

SV Hey Scoob, I don't know about you, but I'm jonesin' for something real bad.

SD A Scooby Snack?

SV No Scoob, I was thinking something a little better than a Scooby Snack.

SD A crack rock?

SV Oh yeah Scoob, a crack rock sounds like, totally awesome right now. But like, I don't have any dough for the dope.

SD You could ru(inaudible)f (inaudible)ck.

SV What are you saying Scoob?

SD Ru(inaudible) (inaudible)ick.

SV We could su(bleep)ck d(bleep)ick for crack rock. Scooby, you're a genius!

SD Whoa hoo hee...

MA *(To music)* That's right, put the kids to bed. These cartoons are for grown-ups. Isn't that right Fat Albert?

MF What's up Fat Albert?

Attachment A

FA Don't call me Fat Albert anymore. From now on, I'm Phat-(*whoop sound*) Diddy-Daddy.

MF What makes you so bad, Phat Diddy-Daddy?

FA Well, for your information (*whoop sound*), last night, Jennifer Lopez was s(bleep)ing Diddy-Daddy's (bleep)ck.

MF Look-ba-out Fat Ba-Albert?

FA I told you, that's Phat Diddy-Daddy.

MF Look-ba-out Phat Ba-Diddy Ba-Daddy. Puff Ba-Daddy's dubing e-ba driv-a-by.
Sounds of shots firing and cars in background.

MF Oh-ba no-ba! P-Ba-Diddy killed Phat-Ba-Diddy Ba-Daddy.
Unclear jingle.

MA Cartoon network's Friday nights. Adult cartoons with adult desires.
Music - Theme from 'The Jetsons' cartoon. "Meet George Jetson."

GJ Great news Jane. I don't need Viagra anymore. I got a Spacely Sprocket (bleep)ck ring. Just one flip of a switch (*zink sound effect*)... (*inaudible sound effects*)... Help, Jane! Cut this crazy thing!

MA (*Music returns*) Cartoons after-hours on Friday nights.

CV Alvin, why do you look so frustrated?

AC I haven't been laid in almost six weeks.

CV Well, you know what the problem is?

AC What?

CV It's that s(bleep)cking pussy music we play.

AC What do you mean?

CV If we wanna get the bitches, we have to play more kick ass music.

AC Like what?

CV Check this sh(bleep) out, Alvin.

CV (*To music*) Suck on my (*inaudible*) Chipmunk (bleep)s. Put'em in your mouth and (bleep)uck'em, filthy chipmunk-whore. Suck on my (*inaudible*) Chipmunk (bleep)s. They taste like pistachios. They're warm and fuzzy. Suck my (bleep).

MA (*Music returns*) Cartoons with balls. Every Friday night at 10 o'clock on Cartoon Network.
Cut to disc jockey, in background.

MH (*Inaudible*) just told me there's some asshole on line...(*breaks to music*)
Recording jumps.

Attachment A

SEGMENT 2:

Announcer: AN
 Answering Machine: FM (female)
 Model Caller: MC (male)
 Receptionist: FR (female)

AN (To music) (inaudible) get your cry-baby whiny ass (inaudible), this is the Bubba Radio Network.
Phone ringing.

FM (On machine). Hi you have reached Kate with Structure underwear model search hotline. I'm sorry I can't take your call right now, but if you leave your name, number and a brief message, I'll get back to you as soon as I can. Thank you (machine beep).

MC Hello? Eh, pick up. Somebody pick up. Hello. Hello, Kate. Can I speak to Kate, please, this is urgent.

FR Structure Model Search, Jennifer speaking, can I help you?

MC Yes, I was uh, trying to get a-hold of Kate. I saw this thing in the paper that you're conducting an underwear model search and, and I would—I need to find out how to enter, 'cause I am definitely your man.

FR Well I can help you, sir. What information do you need – just how to enter?

MC Well, yes, cause, I mean, I've done a lot of nude modeling and underwear modeling, and I've gotta tell you, the response I get – its just phenomenal.

FR So, uh, sir, give me some details about yourself.

MC Well-uh, I have a preny good body, you know. I'm toned, slightly muscular, tan, wash-board stomach, all that. But frankly, my best attribute is—is my penis.

FR Mm hmm.

MC I mean, I don't wanna sound like an ego-maniac, but my d(bleep)ck is a work of art.

FR Um...

MC I mean, its like the hand of God came down and--

FR Mm hmm...

MC and molded the perfect d(bleep)ck outta clay and stuck it on my body. You catch my drift here?

FR Uh-I-I do. Eh, however, it's not nude modeling. Its an underwear, uh, its an underwear-uh, modeling show.

MC I mean my d(bleep)ck should be hanging in the f(bleep)cking Louvre –

FR Oh heh. .

MC right next to the Mona Lisa.

FR Well –

Attachment A

MC It is my firm belief that every person in the world should be able to see my d(bleep)ck.

FR Sir, I don't really need to hear that.

MC As a matter of fact, I have an 8 by 10 glossy of my penis.

FR Uh huh.

MC I could fax that to you --

FR No. No. You don't need to do that sir. You can just send us, uh, if you have um uh another, uh, just a shot of, uh, just your body clothed, that'll do.

MC Well you don't seem to grasp the magnitude of--

FR Mm hmm.

MC of my penis's gorgeousness.

FR Well --

MC I mean, I--uh, it's the perfect penis.

FR Mm hmm.

MC Every inch, every, every f(bleep)ing, every -- every ounce of f(bleep)cking co(bleep) purple (inaudible) of it.

FR Um, yeah. Sir, that's way too much information, and that's not appropriate.

MC Its like a Van Gogh or a Picasso, I mean--

FR Sir, I'm sure it is. --

MC Imagine what it would look like in a pair of Structure underwear.

FR Mm hmm. Glorious, I'm sure, but --

MC I mean, I could start a f(bleep)cking cult with this (bleep). Billions of people worshipping my penis. The Reverend Sung Yung Moon didn't have a d(bleep)ck like this, I'll tell you that right now.

FR You know what sir, I (inaudible) that much information. I--I think that, you know--

MC You know, we could probably just wrap this thing up right now. Just give me the job. I mean, I'm your man.

FR Mm hmm. Well, you just need to send in the proper information, not the information that you're telling me.

MC Well, now look sweetie pie. Did you think there's another man in America who can lift a 25-pound weight with his penis.

FR (Laughing)

MC I can tie a 25-pound (inaudible) plate to my (bleep) and do 13 reps.

FR Mm hmm.

MC Do you understand, uh -- do you understand what I'm saying? I got--I got fu(bleep)cking muscles in my c(bleep)ck.

Attachment A

FR Oh my God.
 MC Do you know anybody else who's got muscles down there?
 FR No, no I don't. And –
 MC I mean if I flex my penis I can split my fu(bleep)cking pants like the Incredible Hulk.
 FR (Laugh) You know what, I—I think that's really great information. But again, we're not gonna need that.
 MC Well, I'll do it right now. I'll put the phone between my jeans. I'm gonna flex my d(bleep)ck like Arnold Schwarzenegger, okay, then you – hello? Hello?
 MH (Laugh) 8:14 at the Bubba Radio Network.
Break in recording.

SEGMENT 3: November 14, 2001, 7:00-9:00 AM

Male Host: MH
 Second Male: SM
 Third Male: TM
 Female Caller: FC
 "NED:" ND

Tape cuts in on talking.

MH (Inaudible) on the jizzack slüzzack of the p(inaudible) or the p(inaudible)ozificat...
 SM (Laughing) I'd like to see how that's written in law. Or uh, in the books.
 TM Yeah.
 MH I wouldn't wanna get elbowed. I mean—you know, the guy's got some RPM's going and all of a sudden – WACK!
 TM (Laughing)
 SM Again, 179 dollars—get a five disc (inaudible) Toshiba DVD player—
 MH Right.
 SM You can sit at home, and uh (inaudible) to your heart's content.
 MH Yeah, wax that carrot all day long.
 SM (Laughing)
 MH Let me ask you a question. Now, when you're in the general population, you're not—you're not in a private booth, but instead you're in one of those—uh, you know—you're in the theatre portion, with of course, uh—the complimentary seat between you. I mean uh, do people-uh, start doing it there too?

Attachment A

FC Oh well, uh—yeah. Yeah.

ND Yes.

FC Oh yeah.

MH Oh well hold on now.

SM (Laughing) Oh ho... uh...

MH What's going on here?

SM Say it isn't so?

MH Ned, tell me you don't go to the (inaudible).

ND I've been there on occasion. I prefer the theatre to the booth

MH Why? For the voyeurism aspect?

ND Uuh-yes. Yeah, sometimes I can get a-round of applause from another patron, so—you know, its-uh—kind of a show off thing.

MH You mean a guy—like another guy will put you over?

ND Oh yeah. The (inaudible) have to stop what their doing and just get--

SM Whoa.

MH Well—based on volume or based on distance?

ND Just on—uh—style.

SM Performance?

ND Performance.

SM Presentation?

ND Facial expressions.

SM Style?

ND Oh, you know, its—you know, everyone's got their own style.

MH Well—hold on now. Plus Ned puts himself over, when Ned's doing it, Ned does (inaudible), you know, most people... Ned, Ned - ooh ooh.

SM Ooh.

ND Convulsion (inaudible).

MH Mmm hmm. There's—there's quiet mas—you know, masturbators, and then there's—you know, loud masturbators—

ND Yes.

MH And Ned happened to be the latter.

ND Looks like I'm having a grand mal seizure.

MH Give us an example, like—you know, maybe just the words you use—maybe—go like "oh god."

SM (Laughing)

ND Well—its uh—you just—you always start off slowly--

Attachment A

MH Well—I'll—I'll give you the—*(starts a drumming rhythm)*
 ND *(Acting out)* Oh yeah... oh man...
 MH *(Still drumming)* Now you'll beat—you'll say that?
 ND Oh God... Yeah. People—you know, that's what those guys are there for anyway. They wanna see a show.
 MH *(Drumming gets faster)*
 ND Oh—it's coming Oh man. Oh yeah. Oh—come on. RPM's going—Oh God. Ooooh... *(inaudible)*... Ooooh. Ooooh—its coming. Ooooh—man. Ooooh—*(inaudible)*... concentration...
 SV Sweet Jesus.
 ND Oh—you know, gotta *(inaudible)*. Hmmmm. *(inaudible)* Yeeeah. What do you say there, sparky,-what's up? Aaah, ooh yeah, oh God. Here I go again! Ooooh yeah, I'm gonna go—oh oh oh oh *(increasing volume and drumming rhythm)* aazah *(screaming)*—ooooh Whew. Aahroooo.
 MH Crazy ass Ned.
 SV God.
 MH Five in front of the top of the hour.

SEGMENT 4: November 19, 2001, 8:00-9:00 AM

Male Host: MH
 Second Male Voice: SM *(sometimes indistinguishable)*
 Third Male Voice: TM *(sometimes indistinguishable)*
 Female Caller: FC

(Recording begins amidst discussion)

FC --sleep with Spider. And see I can tell you anything you wanna know about him.
 MH How long's his penis?
 FC Uuh, about six inches.
 MH Is it—so it's medium?
 FC It's medium, yeah.
 MH At best. And what—what position did you guys sleep in.
 FC Um, let me just tell you this, he's a jack-rabbit, that's all he is.
 MH Is--
 SM *(giggling)*
 FC Hop-on, hop-off.
 SM *(laughing)*
 MH So it wasn't very long?

Attachment A

FC No, um, he said something about having prostate infections or something—
Uproar of laughter.

MH Get Spider—get Spider on the phone and ask him--

SM He change—he changed his phone number. We don't even have it.

MH Oh man.

SM (Laugh) (inaudible over others)

MH So how long—and —and—and—when he banged ya, how long did it last?

FC 'Bout two minutes.

MH You're kidding me? -

FC I'm not joking.

MH What position, from behind?

FC No, first it was missionary. After I gave him, um--

MH Right, oral

FC You know. Yeah.

MH You—you gave him oral?

FC See and then, like--

MH Did he give you oral? God I hope not.

SM (Muddled—laugh) Oh...

FC What do you mean you hope not?

MH It's just not good going down on a heavier set chick on oral. There's some
cheese down there.

FC You know what, he didn't even tell you the whole story on why I'm heavy.
And he didn't tell you that I am losing weight now.
Break in tape.
Recording resumes.

MH I was heavy because of my illness. It was called an eating disorder.

SM Yeah, eating disorders are an illness (inaudible).

FC No, no, no.

MH It was called (inaudible—chewing) Buffet three times a day, with a side order
of Wendy's fries.

FC Spider was trying to make sure that I ate every day.
Laughing.

SM He did a—he obviously did a good job.

MH He was trying—he was trying to pump you up a little bit?

SM/TM (Laughing)

MH He was like, fatten that turkey for Thanksgiving.

Attachment A

Uproar of laughter.

FC (Amidst the laughing) You guys don't understand.

MH I'm gonna get this breast nice and— Can somebody check Brent, he's having a convulsion over here?

Continuous laughter.

MH Somebody check Brent, he's having a convulsion.

Deep inhale.

TM Easy, Brent

Laughing, inhales, snorting, etc.

MH Why—was he trying to pump you up a little bit?

SM/TM (laughing)

MH Are you like a Ball Park Plank—Frank you pump when we bang ya?

TM Flump when you bang her?

MH It's a Ball Park Frank—is, you pump when you bang her. How big are you?

FC What does it matter?

MH Well, cause I—I just wanna get a (inaudible)—

Unknown Male She's big, I've seen her.

SM (Laughing)

MH How big would you say, Spice?

TM Uh, I'd say about 250, 260.

MH Okay, so she's a big girl. Yeah.

TM That's not too bad.

SM (Laughing) What?

MH Hm. What—

SM What are you talking about (inaudible)?

TM I'm saying she—she needs to lose is a hundred pounds.

MH Yeah, no big deal.

SM A hundred pounds, man.

TM That's not too bad.

MH Alright, stand by, mo—more of this—more of this—

FC *(In background, crying)* I'm sorry ..*(beeping sound)*... and I just want you to know that I...

End of tape.

Attachment A

SEGMENT 5: November 26, 2001, 7:00-9:00 AM

Male Host: MH
Second Male Voice: SM (sometimes indistinguishable)
Third Male Voice: TM (sometimes indistinguishable)
Female "Hilary": FH
Female "Sarah": FS

(Recording begins amidst discussion)

SM That is a nice booty
MH -- that—that's points against you. I'm gonna be honest with you.
FH Okay, okay.
SM Nooo.
MH Unless you're letting me call—unless we're having phone sex later tonight.
You know, you're--you're solidly in like tenth place right now.
FH Laugh.
MH Alright, c-c-can ya get I get a little bit more of the ass. Oh right there, yeah,
yeah.
MH Now can I get a front shot, because the front shot (inaudible). Yeah right
there. Oh man. Whoa.
SM See Hilary, we're professionals.
FH Fair enough.
SM See We're like the ice-men. We've seen it before.
FH That's true.
MH This does nothing for me, Hilary. You don't understand, you know—I mean
this is—I mean, you know. Not like I wanna go home and take these pictures
and masturbate off to you.
FH No, yeah, sure.
SM No, no that would be totally out of the question.
FH (Laughing)
SM (Laughing) Not you.
MH See I wanna—I wanna get a front panty shot from you Hilary.
FH You know why I haven't done front—front panty shots?
MH Uh--by the way, I love your finger nails. Oh bu--they--They feel so good on
my boys, by the way.
FH Oh yeah.
SM Good God, (laugh).
MH / SM Yeah. (inaudible), chill out. (inaudible), you're throwing a wet blanket on
(inaudible).

Attachment A

SM / MH No, I (inaudible).
FH (Laughing)
MH (Inaudible), they would. I mean, that—that's one of my favorites.
SM The nails on the boys?
MH Oh yeah, nails on the boys.
SM Exactly.
MH Exactly. See—she knows.
SM Oh, you're done baby. You could--
FH *(Talking, in background, muffled)*
SM What's that?
FH (Inaudible) shaved right?
MH Oh yeah. I'm gonna—(inaudible) my boys, yeah.
FH *(Talking, in background, muffled)*
MH Does he—does he shave 'em?
FH Oh yeah.
SM Have you seen shaved boys before?
FH Yeah. (muffled —) oh yeah.
MH My boys are—my whole deal down there is shaved. I got the cleanest presentation in town. (inaudible)
FH That's good. That's good. No—no hairs in the teeth and stuff.
SM (Moaning) Right, right.
MH So why are you—why are you—why—are you—are you good at oral? Are you a big oral queen?
FH Yeah, I'm a big oral queen. I used to have my tongue pierced. And then I took that out but—yeah. I like giving. I don't really enjoy gettin' though.
MH Really?
FH Yeah.
MH You'd rather just give and give and give?
FH I'd--I'd rather give -- yeah
SM For like an hour—an hour nonstop. Can you--
MH Can you go—can you go a half-hour solid?
FH Yeah but my cheeks would hurt.
MH Right.
FH They start hurting up in here you know
SM Mmm hmm.
MH I'll--I'll give you a little bit of rest.

Attachment A

SM: Wow. That's my style. God that's nice.

FH: Yeah.

MH: We can—we can go for oral or -- I—we can do like a half-hour intercourse (inaudible).

SM: Yeah but she's definitely (inaudible) more and more (inaudible).

FH: (Inaudible)

TM: She's (inaudible)—she's (inaudible) more and more (inaudible)

SM: She doesn't like getting it, but she likes giving it

TM: (Inaudible) I like that.

FH: (Laughing)

MH: I got first dibs on her by the way, okay? I just want everybody to know that I got first dibs on her Brent so don't you be calling her today.

FH: (Laugh)

MH: If Brent calls you before I do, hang up on him, okay?

FH: Yeah (laughing), will do.

SM: That's really funny.

SM: It's me, Brent...

MH: Make sure you you—yeah Brent and—don't try to be Bubba either.

SM: Can I come over and (inaudible).

MH: Be Bubba.

SM: (Mimicking) Hello, it's Bubba. How you doing?

FH: (Laughing)

SM: (Still mimicking) (inaudible)

MH: So—you don't—(inaudible).

FH: (Laughing)

Conversation fades out. Break.
Recording begins amidst conversation.

FH: Yeah.

SM: (Inaudible), tell the truth.

MH: I can bring George in here for truth in broadcasting (inaudible).

SM: Did you experiment in high school?

FH: Not in high school, about six months ago.

MH: Oh, okay, not in high school.

TM: Yeah--(inaudible)

SM: Have you—have you ever ex--experimented with a chick before?

Attachment A

FH Not with a chick, no.
MH What do you mean, not with a chick? I mean, obviously you've experimented with guys before.
FH With guys yeah.
TM There's—there's—there's two equations--
FH With a couple guys, yeah.
MH (Inaudible)
SM Oh you've had two guys before? Let's talk about that...
FH Yeah.
MH Wa—wait hold on, you've had two guys before?
FH At one time, yeah.
MH Ya did?
FH Yeah.
TM/SM Hmm. / Ooooh.
MH Can we talk about that?
FH Yeah we can kinda talk about that.
MH/SM Where—when did it happen? How long ago?
FH I was eighteen. I was a freshman in college...
MH Right. And you banged two guys together at once?
SM What school did you—what school did you go to?
FH Well I—noah... I lived in Hickory, North Carolina, and then I went to college in Greensboro.
MH Right. Right. So anyway (inaudible)--
FH So I went to UNC Greensboro.
MH Was it your boyfriend and one of his friends? Was that what it was?
FH No, it wasn't a boyfriend, neither one of them.
MH Two stron—two strange guys?
FH Well one of them I'd kinda been banging for a while, you know.
MH Right.
FH And then the other one was just kind of a random that got thrown into the mix that night.
MH How—how did that happen?
FH I don't know.
MH Are you telling the truth, or are you making this up?
FH No, I swear. No, no, I really swear.
SM Were they—were they doing it at the same time? Or did they take turns?

Attachment A

MH Yeah, absolutely!

FH They'd take turns.

MH No! It was the same time on you. I know it was.

FH No—no it really wasn't! It was--

MH It wasn't one from the front, one from the back?

FH Not. I'd probably explode.

MH Isn't that what you wanted?

FH What—both of them at the same time?

MH Right.

FH Um, kind of.

MH Were you drunk?

FH Yes, I was drunk.

MH Absolutely. Of course you're going to hide behind that (inaudible)...but I don't believe that (inaudible).

SM Uuh...that's okay... So they took turns huh?

MH Right?

FH Yeah.

MH How—how long did it last? Was it a pretty—an all night orgy (inaudible)?

FH Um, it was a good hour at least.

MH How many orgasms did you have?

FH You know, I've never had an orgasm during sex.

SM WHAT?

MH Well—now hold on. That's—that's almost a challenge for me now.

FH (Laugh)

SM You've never had an orgasm from sex.

FH I swear.

MH You've never had an orgasm before?

FH And it makes me so damn mad.

MH You've never—have you ever had one through oral?

FH No.

MH No.

SM Well yeah, she doesn't like oral.

MH Well—yeh—she fo—yeah she—she hates oral.

SM/TM Wow.

MH So you—you never—you know why? Because you've never had a guy properly stimulate your g-spot. That's why.

Attachment A

FH I mean, that could be.
SM Yeah.
SM/TM That's—no, no—that's not--
FS But I think its cause I masturbate too much.
MH How—how often do you masturbate?
FH Usually--
MH Be honest.
SM She looks like a masturbator.
FH Usually once a day. Yeah – I'm a masturbator.
SM Uoh man.
MH Now—now do you do it with a vibrator? Or do you use just your fingers?
SM/TM (inaudible amongst selves) (laugh)
FH Just my hands.
MH Really?
SM Water—do you use the water trick?
MH Yeah, do you use--
FH No.
MH A lot of women do the water deal now-a-days. That's—it tends to be very popular.
FH No... no.
FS See, I don't—I don't see that at all. I'd rather use a toy.
SM (inaudible)
MH Wow.
FH I'd rather use my hand.
MH How—how bout you, Sarah? How often do you masturbate?
FS Um, not very often, because, I--I get a lot of bootie.
MH Ob—obviously you got George around. (inaudible), right?
FS Yes, exactly. But I—I do have two toys, so...
MH Right.
FS So, I do, when he's not around.
MH Now, Hilary are you uh – do you use a toy at all?
FH I have a toy. But I don't really enjoy it.
SM She—she's a hand masturbator.
MH Right.
FH Yeah. I'm a hand masturbator.
SM She—she's a hand queen.

Attachment A

MH Wow. Now see—and you do it about every day?

FH Yeah.

SM You say you do it about every day?

FH And sometimes I get going one day and I might go several times that day.

SM Mmm oooh. (sighing)

MH What's the most times, recently that you masturbated in one day?

FH Oh maybe like, seven or eight.

MH In one day?

FS Yeah. . (sighing).

SM Whoa (laugh).

FH Yeah.

MH Now, can you have an orgasm every time?

FH Yeah.

SM Huh—see that's the beauty of being a chick. This is—uh—

MH See us guys, we can't—there's no way we could do seven or eight times (inaudible—talking over one another).

SM Yeah, we can't (inaudible). Three would be—uh—the most.

TM Right.

FH I mean I can do, like thirty seconds in between em.

MH Can you do one right now—can you do one right now?

FH No. (inaudible)

MH Well, you could—you could, but you won't.

FH Well I could, but I won't. Exactly.

MH Why won't you?

FH Cause I'm too nervous.

MH Come on.

FH I've never done it in front of other people.

MH How bout we—how bout we, uh, close the studio and it'd just be and you in here.

FH No. (laugh)

MH Well—how bout we put you in a room by yourself—

SM In whose room?

MH O—over the telephone, and you do it?

FH (Laughing) I don't know if I could do that.

MH Now see that would be—but that would be landmark. (inaudible)

FH That would be!

MH Okay then. I mean—and—

Attachment A

SM We could put you in Bubba's office...

MH I could—I could put you in my office. You've been in my office. I could shut--

FH I've been in there.

MH Okay I can--

FH I love the carpet, by the way.

MH Thank you very much. And you're back could be hitting that carpet here soon.

FH (Laughing)

MH But what I'm saying is—that you can get on my couch. You can call me over the telephone. I'll lock the door. You know there's no windows or anything in there?

FH Right.

MH And you can—you know... After all honey, if you wouldn't have thrown me the bone in saying you masturbate a lot, how—would I even have asked it of you? No.

SM Right.

FH That's true.

MH You offered the information.

FH I did.

MH So, would there be any way I could put you in there?

FH I don't know. Does it increase my chances of getting boobs?

MH Well—I think so, it does, yeah.

FH You think so?

MH I think—I think it's a fine equation as to who wins and who doesn't win.

FH Yeah, we have to work out a deal on that.

MH Uh, well, possibly, yeah.

FH Oh, okay.

MH So, I mean, would you do that for me? I mean, and you know what (inaudible)-

FH Perhaps.

MH I've been doing this for a long long time, and I'll be able to tell if it's fake or not. Cause I've been doing this for a long long time.

FH Yeah.

MH I know--

FH But I'm not noisy when I do it.

MH Not at all?

Attachment A

FH No, I mean there's no—there's no--
Deep breathing from unknown source.

FH Well no, not really. It's more like I hold my breath until it happens, and then, you know.

MH Well—okay, when it finally—when it finally—when it finally happens what do you do? I mean--

FH I just lay there and breathe.

MH So it'd be—you're trying to say we wouldn't get anything out of it at all?

FH You might—no, no. Cause there's no need to be vocal when there's--

MH See that's—see that's why you'd have to do it in the studio where I could watch. Cause I could—I could give play by play then.

FH Well, (laughing)

SM Aaah, see she—she thought she could get out of it (inaudible).

FH (laughing), no—I wasn't—I wasn't trying to get out of it, I'm just saying.

MH I'm just saying Hilary, I mean you know, the bottom line is—Maybe Sarah can do it for you?

FH (Laughing)

MH I mean, she's bi--

SM (Inaudible)

FH But I'm not, no.

SM Yeah (inaudible) into this trap.

MH Would you be willing to do that or no?

FH No. (laughing)

SM You gotta--, keep—keep going in this line...

MH How bout I do it? How bout I do it?

FH (Still laughing), no. No way.

MH How bout I do it for you?

FH No can do.

MH Why not?

SM (Inaudible)

MH Now see, you're single?

SM (Inaudible)

FH I'm single.

MH Right?

FH Yeah.

MH (Inaudible) Right. And you know—obviously, you know. You're attracted to me. I can tell—a little sparkle in your eye.

Attachment A

FH (Laugh)
 MH You like a—you like a strong man like me
 FH Right.
 MH Nice wager and earner.
 FH Exactly.
 MH Large penis.
 FH Exactly.
 MH Clean shaven.
 FH Right.
 MH Solid, rugged, tan.
 FH Mmm hmm. (laugh)
 SM (Laughing)
 MH I—I could do it for you almost.
 FH Almost.
 MH Well I mean—I—have you—is it beyond the—is it beyond the realm of having a guy masturbate you wha—when you like him? Has it ever happened? You gotta come at orgasm...
 SM Yeah.
 FH Right.
 MH (Inaudible) the orgasm.
 FH No, no orgasm.
 MH So, you—you can't—even a MAN trying to masturbate you, you can not orgasm.
 FH No.
 SM Wow.
 MH There's a first time for everything isn't there.
 FS That's crazy.
 FH I know, isn't that weird?
 FS (Inaudible)
 MH You know, I gave (inaudible) oral on the radio.
 FH Really?
 MH Yeah and you say you don't like it—but ya—maybe the reason you don't like it is because you haven't gotten it correctly.
 SM Yeah, that is true.
 FH Well, you know what, I mean—that could be.
 MH Right. So if you wanna hike yourself up over here and you know, I could show ya—

Attachment A

FH (Laughing)
MH --the proper way to do it.
FH (Laugh) I appreciate the offer.
MH Okay. Was that a solid no?
FH That's a solid no.
MH Fantastic
FH&FS (Laughing)
MH (Inaudible), I tried—I tried all my bag of tricks, I've exhausted them all.
SM Yeah.
MH I was trying to take it to the—(inaudible)—
SM But you made a good run at it though.
MH Let me show you my four—my four—my four—you know, I got so many different bag of tricks. I went from her doing herself in private...
SM Right.
FH&FS (Laughing)
MH To her doing it here and with me coaching and giving play by play...
FH/FS (Laughing)
SM Clear in the studio.
FH (Laugh)
MH To Sarah doing it,
FH or FS Okay...
MH To—to me doing it! And I struck out all four—four strikes and you're—you're solidly out Brent.
SM Yeah.
TM Right.
SM And you didn't even foul one off man.
MH No, I didn't even foul one off.
FH&FS (Laughing)
MH I—I got Bruce Spri—I got Bruce (inaudible) and Fernando Venezuela (inaudible).
FH&FS (Laughing)
MH Well thank you for being—for being so non-accommodating today though, Hilary.
FH I'm sorry.
MH You—you throw me all these emotional bones, and you're expecting I'm gonna bite on several, and I did—and then you're not able to facilitate any of them.
FH I tried.

Attachment A

SM Right.
FH I tried.

SEGMENT 6: November 27, 2001, 7:30-9:00 AM

Male Host: MH
Male Co-host: SH
Female Guest: FG [1-2]

FG1 No, we work in a, its like a (inaudible) office.
MH Right.
FG1 Off-site. But it's like near it so...
FG2 Yeah.
MH Right, right.
MH Well, you know ladies, we're gotta take a picture of your boobs now. Are you -- are you embarrassed?
FG1 (Laughing)
FG2 Very. (laugh) Very.
MH Tell the ladies that are listening to the show and are possibly gonna be part of the 12 boobs of Christmas, its not that bad.
FG1 No, its not.
MH We're trying to make it comfortable for you lovely ladies. I, you know, I would be embarrassed too, if I had to go to a --
FG2 (Laughing)
MH in a room full of a bunch of girls and show my small penis.
FG1&2 (Laughing)
MH Inevitably that's what you're doing, right. I mean -- although -- my boobs and your -- your boobs and and --
SH I think boobs and penis are way different.
MH Yeah, I mean, you know --
SH You—you can get a boob enlargement--
MH (Talking over second host) one's just (inaudible) and the other one's just -- add-ons, you know?
FG1&2 Yeah, but still, its (inaudible).
MH Yeah it is sexual but you guys are sexy. You know what I'm saying? It ain't like you some block-rocking road whores You guys are hot.
FG1&2 (Laugh)

Attachment A

MH You guys are hot. I mean, you know what I'm saying? And - you know, the only thing you guys are missing is a real nice set of boobies.

FG1or2 (Mumbling) yeah (inaudible).

MH Alright, well, lets get some pictures here. We'll go with you first though, Lisa. Are you Lisa or Vanessa?

FG1 Vanessa.

MH Okay Vanessa.

FG1 Alright, do I take it all the way off or--

SH No no no, (inaudible)... get on my--

MH You gotta get on my booster chair here though.

FG1&2 (Laughing)

SH Are you guys married? You guys married?

FG1 No.

FG2 I'm recently single.

MH Oh, you're recently single? And how 'bout you. You single or are you married?

FG1 Yeah, I have a boyfriend. He's actually listening in the car (laugh) right now.

MH Who--What's his name?

FG1 Brandon.

MH What's he do for a living?

FG1 He is a maintenance supervisor.

MH Right.

SH Janitor?

FG1 (Laughing) No-o-

MH That means he changes oil.

SH (Laughing)

FG1 (Laughing) No

MH (Sniggering - inaudible) When was the last time you and Brandon screwed? Be honest.

FG1 Last night.

MH You guys screwed last night?

FG1 Mmm hmm.

MH How was it?

FG1 It was good.

MH What position is your favorite? Like, last night, what'd you guys end up --

FG2 (Laughing)

Attachment A

FG1 Its actually just—with him on top. Cause I had surgery so I can't do it a lot of different ways.

MH Really, what kind of surgery? Like a—like a ovarian kinda deal?

FG1 Mmm hmm. I had my right one removed.

MH Oh, are you gonna be okay on that deal?

FG1 Yeah.

MH Are you sure?

FG1 Yes.

MH Right, so that—that kinda hinders like the doggie and the (inaudible)--

FG1 Yeah.

MH Right.

FG1 Yeah.

SH Does that mean you can't have kids at all or, how, I mean, does that affect you?

FG1 It's just limited. It's like, cause you only have one ovary now.

MH Right, instead of two.

FG1 Right.

MH You only got one goalie, instead of two goalie's blocking out the (inaudible)

FG1 Right (laughing).

MH (Still talking, inaudible).

FG1 Right.

MH Alright, so you—did you give him oral last night?

FG1 No.

MH Why not?

FG1 Cause.

MH You don't like that.

FG1 No, I do it often.

MH Well you frowned it up, like possibly you had a big oral (inaudible). And, I mean, that's very important for us guys, to be honest with you.

FG1 Well he actually gets it a lot.

MH He gets a lot of oral.

FG1 Just not last night (laughing) um...

MH Really, how often does Brandon get oral from—from your hot self?

FG1 Usually...

MH Once a day?

FG1 Yeah.

Attachment A

MH Really.

FG1 (Inaudible)

MH I mean, that's a lot.

SH Yeah. That's pretty—that's nice odds. That uh, pretty good.

MH Do you uh—do you uh—do you, let me see, do you recycle or do you--

FG1 (Laughing)

MH You uh—you uh—you don't waste a drop? (inaudible) right?

FG1 Right.

SH You do that too?

FG1 Hmm hmm.

MH Wow you little sleazy (inaudible).

SH When you look at her you wouldn't even, you wouldn't even believe it.

MH God, you're so—you are so conservative and school-teacher-like, but yet you know--

FG1 (Laughing)

MH you give oral sex, you don't waste a drop, God. Wow!

FG1 (Laughing)

MH Alright, well get on my booster—see that little booster chair over there? My shady boos—And you gotta tattoo—

SH She's gotta little tattoo—

MH On the belly button (inaudible)... Now Brent's (inaudible)

SH Oh yeah. She's a freak. (inaudible)

MH Are you a freak?

SH It is official.

FG1 Well--

MH It's official. Brent's (inaudible) on it.

FG1 (Laughing)

SH Right.

MH Are you a freak? I mean; you know like when you're getting' laid are you vocal, --

FG1 Mmm Hmm

MH Do you tell Brandon, "harder, harder, and f- me harder," the whole nine yards?

FG1 Yeah. You can't just lay there.

MH Right. Wow. Okay, cool. Well, lets—lets get you on my shady, uh little booster chair here.

Attachment A

MH Brent, I'm gonna give you like ten dollars and see if you can get one of the producers to buy me a new shady chair. I'm afraid that some—one of these ladies with the high heels are gonna poke through that little hole, you know what I'm saying?

SH Take 'em off. You can take--

MH Yeah, there you go.

MH Look at you. Well—what are you like a size 3, a size 1? Alright, get on the chair there. Oh—no, just s—no stand, stand. Don't sit, just stand. You can keep your—you can keep your heels on baby. I'm sure you're coo(inaudible). There you go. Wow, look at you.

FG1 (Giggling)

MH Just (inaudible)—don't be—don't be nervous, sweetie.

FG1 (In background, inaudible)

MH Hold on, you're boyfriend isn't gonna see your boobs? Cause you're that conscious of them? But I wanna help facilitate you on some new boobies, baby.

FG1 (In background) okay..

MH I hope I can too, I really do. I--

FG1 (Giggling)

SH Wow.

MH I hope (inaudible) picks you.

SH Brandon's gotta be pissed, man. Here we are checking out her--

MH Yeah, here we are checking out her titties, and he never--

SH And he never even sees them

MH Because you know, I can look now.

SH We'll describe them to you, Brandon.

FG1 (Laugh)

MH Yeah but I would--

Tape ends.

Attachment A

SEGMENT 7: December 27, 2001, 8:00-9:00 AM

Male Host: MH
 Second Male: SM
 Third Male: TM (sometimes indistinguishable)
 Singer: SI
 Chorus: CH

(Recording breaks in amidst discussion)

MH --I knew that I had big ones but, I guess I got big ones. I--never have been told that, guys - that my testicles were ab-abnormally large.
Music begins in the background.

SM The first time I've ever seen 'em--testicles that big. Pornos or anything.
 TM Seriously.
 SM Yeah.
 MH Seriously.
 SM Yeah.
 TM You could break 'em into (inaudible) *(garbled mumbling)*.
 SM Yeah.
 TM (Laugh)
 SM I think you might have genital elephantitis, I'm serious. You better get those things checked out.
 TM You got abnormal sized boys...
 Unknown Male Yeah - they're huge.
All laughing. Song fades over discussion.

SI *(To music)* Well he's the big fat king of shock jock impropriety.
 MH I got big ones
 SI And Bubba's ba(bleep)lls are of the coconut-size variety.
 SM & TM They were hanging.
 SI And he wore extra-large size diapers when he was very small. In fact, his ba(bleep)lls were so damn big that Bubba couldn't even crawl. *(Chorus of music begins)* Oh Bubba's got big ba(bleep)lls.
 SM Oh you do.
 TM Seriously.
 SI Giam big ba(bleep)lls.
 MH They're testimonious.

Attachment A

SI They're shaped like beach balls. And they're stinky big ba(bleep)lls. Oh Ned has big ba(bleep)lls, and Spice Boy, he's got big ba(bleep)lls.

SM/TM Yeah—huge. (Inaudible)

SI But Bubba's got the biggest--

Unknown Huge (laughing).

SI *(With chorus)* Ba(bleep)lls of them all!

SI Bubba's ba(bleep)lls are always itching and they're full of little crabs. And Brent likes to bounce them up and down upon his chin.

SM I mean, God.

TM Ooh.

SI And if you claim that yours are bigger, then you are just a fu(bleep)cking liar. Bubba's ba(bleep)lls could heat Alaska if they ever caught on fire.

SJ Bubba's ba(bleep)lls bounce on the floor every time he gets undressed.

SM Jesus.

SI And those things would be a D-cup if you stuck them on your chest.

MH I got big ones.

SI Bubba's ba(bleep)lls are firm and meaty and they never ever droop. One time I even saw a black man try to dunk one through a hoop. *(Chorus of music begins)* Oh Bubba's got big ba(bleep)lls.

SM That's huge.

SI Giant big ba(bleep)lls.

TM Soft balls.

SI They're shaped like beach balls. And they're stinky big ba(bleep)lls.

MH Hanging.

SI Yes Ned has big ba(bleep)lls, and oh, Spice Boy's got big ba(bleep)lls.

SI *(With chorus)* But Bubba's got the biggest--

Unknown That's huge.

SI *(With chorus)* Ba(bleep)lls of them all!

CH *(In background)* Oh—he's got big balls. He's got big balls. He's got big balls *(continues repeating)*.

TM You got some cantaloupes down there.

SI And he's just itching to tell you about them.

MH Do they look big from the sides?

SI Ad nauseum.

MH I think it would look fairly impressive if I would show it to you guys

SM/TM Eeeuh.

Attachment A

CH *(Still repeating in background)* Oh—he's got big balls. He's got big balls. He's got big balls *(continuing)*.

SI In-grown hairs.

MH Got big ones.

CH *(Continuing in background)* —he's got big balls. He's got big balls *(still repeating)*.

SI Pimples.

SM/TM Eeuh, God.

SI Cottage cheese.

CH *(In background still repeating, then chorus)* But Bubba's got the biggest—

TM Yeah, you need to start thumping *(thumping noise)* on them like the produce.

CH *(In background)* Balls of them all!

SI Chaffing.

SM Jesus.

CH *(In background)* Oh—he's got big balls. He's got big balls *(repeating)*.

SI Salmonella.

Attachment B

FCC List of Small Entities

October 2002

ATTACHMENT B

FCC List of Small Entities

As described below, a “small entity” may be a small organization,
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	
International Public Fixed Radio (Public and Control Stations)	

Fixed Satellite Transmit/Receive Earth Stations	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A

Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Station WPLA(FM), Callahan, Florida; WCKT(FM), Port Charlotte, Florida (Formerly Station WRLR(FM)); Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida.

Seven broadcasts, twenty-six indecency violations, four public file violations and fines equaling \$755,000. By today's action, we provide yet another example of this Commission's commitment to enforce its rules and regulations—especially as it relates to indecent programming engulfing our broadcast airwaves.

As the Commission with the strongest enforcement record in decades, it should come as little surprise that this Commission's indecency enforcement has dwarfed its predecessors. I am proud of the fact that over the past three years, we have proposed nearly twice the dollar amount of indecency fines than the previous two Commissions combined (over seven years) and ten times the amount of fines proposed by the last Commission.

Now is not, however, a time to rest on our laurels and no broadcaster should believe that we will. Indeed, due to the leadership on this issue from Commissioner Martin, the Commission will soon begin considering fines for each separate utterance found indecent in a broadcast. In addition, we will continue to look to Congress to dramatically increase the enforcement penalties available to us to prosecute clear indecency violations. I applaud Chairman Upton, Chairman Tauzin, Congressmen Dingell and Markey, Chairman McCain, Senator Hollings and the many others on both sides of the aisle in Congress for providing vital leadership on this issue.

As the Commission continues the challenging task of balancing the protections of the First Amendment with the need to protect our young, these increased enforcement actions will allow the Commission to turn what is now a "cost of doing business" into a significant "cost for doing indecent business."

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING**

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Stations WPLA(FM), Callahan, Florida, and WCKT(FM), Port Charlotte, Florida (Formerly Station WRLR(FM)); Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida, Notice of Apparent Liability for Forfeiture

In this case, four Clear Channel stations aired on several occasions graphic and explicit sexual content as entertainment. The extreme nature of these broadcasts and the fact that the show at issue has been the subject of repeated indecency actions gives the FCC the obligation to take serious action. Instead, the majority proposes a mere \$27,500 fine for each incident. Such a fine will be easily absorbed as a “cost of doing business” and fails to send a message that the Commission is serious about enforcing the nation’s indecency laws. “Cost of doing business fines” are never going to stop the media’s slide to the bottom.

To fulfill our duty under the law, I believe the Commission should have designated these cases for a hearing on the revocation of these stations’ licenses, as provided for by Section 312(a)(6) of the Communications Act. I am discouraged that my colleagues would not join me in taking a firm stand against indecency on the airwaves.

If the Commission can’t bring itself to go to a revocation hearing, at least the Commission should have used its current statutory authority to impose a higher and meaningful fine. The Commission could have proposed a fine for each separate “utterance” that was indecent, rather than one fine for each lengthy segment. As Commissioner Martin points out, such an approach would have led to a significantly higher fine.

Here, four Clear Channel stations ran several segments of the “Bubba the Love Sponge” show which contained graphic and explicit sexual content. The majority admits that each of these stations appears to have egregiously and extensively violated the statutory ban on broadcast of indecent material numerous times. But then the majority inexplicably determines that the appropriate recourse for this filth is a \$27,500 fine for each violation.

The majority states that, in light of Clear Channel’s history of violations of the indecency rules, other serious multiple violations “may well lead to license revocation proceedings.” The majority fails to acknowledge that not just Clear Channel, but the “Bubba the Love Sponge” show, has been the subject of at least three previous fines for violating our nation’s indecency laws. This is not even “three strikes and you are out” enforcement. How many strikes are we going to give them?

This case may well lead broadcasters to believe that this Commission will never use the enforcement authority it currently has available to it. The message to licensees is clear. Even egregious repeated violations will not result in revocation of a license. Rather, they will result only in a financial penalty that is merely a cost of doing business.

The time has come for this Commission to take a firm stand against the “race to the bottom” as the level of discourse on the public’s airwaves gets progressively coarser and more violent. Our enforcement actions should convince broadcasters that they cannot ignore their

responsibility to serve the public interest and to protect children. The FCC's action today fails to do so.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Station WPLA(FM), Callahan, Florida, WCKT(FM), Port Charlotte, Florida; Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida, Notice of Apparent Liability for Forfeiture

I agree with this Notice's conclusion that the licensees at issue apparently violated our indecency rule and public file requirements.

I write separately to emphasize again that we could, and should, be placing higher fines on those who broadcast indecent programming during the hours when children may be watching or listening, in violation of our rules and statute. The governing statute targets "whoever utters" indecent or profane language, and the Commission should not continue to treat an entire program full of indecent "utterances" as just one violation.¹ We should not continue to give a broadcaster who violates our indecency rule at the beginning of a program a "free pass" for the next two hours.

In this case, I would have found numerous violations, for a total indecency fine significantly higher than that proposed (it appears there were at least 49 indecency violations, for a total forfeiture exceeding \$1,000,000).

¹ See 18 U.S.C. § 1864 ("Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both"), 47 C.F.R. § 73.3999 ("No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent").

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Clear Channel Broadcasting Licenses, Inc., Notice of Apparent Liability for Forfeiture

The Commission has a duty to enforce statutory and regulatory provisions restricting broadcast indecency. The material broadcast by these four Clear Channel radio stations is undeniably graphic and explicit in its sexual content and clearly intended to shock listeners. Clear Channel and, indeed, this particular “Bubba the Love Sponge” program have been the subject of repeated Commission indecency actions in the past. Given the explicit nature of the broadcast material and the history of prior offenses, this is the type of serious repeated behavior that I believe would warrant initiation of license revocation hearings.

In fairness, however, this material was broadcast in 2001. The Commission clarified in an April 2003 order that it was broadening its range of enforcement approaches and tools to combat indecency on our nation’s public airwaves. For this reason, I approve of today’s Order as legally appropriate. The egregious nature of the material clearly warrants the statutory maximum \$27,500 fine per violation. While the Commission at all times has the authority to initiate license revocation hearings or sanction for multiple indecent utterances in a given program segment, it can be argued that the Commission was not employing these approaches at the time this material was broadcast. Nonetheless, as we made clear last year, broadcasters are now aware that the Commission will not hesitate to use its full range of enforcement sanctions for indecent material broadcast after April 2003.

I also acknowledge the importance of broadcasters adhering to the public inspection file rules. Documents pertaining to an FCC investigation are clearly within the scope of the information that must be maintained in a manner accessible to the listening public. In this case, each of the stations inexplicably failed to include complaints related to the airing of this material in their public files.

A broadcast license is a public privilege. In return, broadcasters have a responsibility to serve the public. This public interest responsibility clearly encompasses protecting children from indecency on the airwaves and facilitating public access to documentation through which the station can remain accountable to its local community and listening public. These stations exhibited a blatant disregard for both.